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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

FIDELITY NATIONAL TITLE INSURANCE COMPANY, et al, Plaintiffs, vs. JAMES C. CASTLE aka J. CHRISTOPER CASTLE, et al, Defendants.	Case No. 3:11-cv-00896 -SI **MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO MOTION FOR PRELIMINARY INJUNCTION** **Hearing** Date: November 4, 2011 Time: 9:30 a.m. Courtroom: Courtroom 10 Judge: Hon. Susan Illston No Trial Date Set

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Rules

INTRODUCTION

Plaintiffs here seek to obtain a preliminary injunction freezing all the assets in bank accounts belonging to the enjoined defendants.[1] However they have utterly failed to meet their evidentiary burden, often not even mentioning critical elements. They have failed to make *any* evidentiary showing of wrongful conduct on the part of the enjoined defendants, much less the substantial showing necessary to preclude the enjoined defendants' use of their own money pending an eventual trial, perhaps years from now. They have not set forth the correct standard for obtaining a preliminary injunction and have not even addressed two of the required elements. They have not *attempted* to offer evidence that they will prevail on their substantive claims. Their evidentiary showing that they will prevail on their request for equitable relief in the form of a constructive trust is practically nonexistent. Finally, they offer no evidence *whatsoever* that the drastic remedy of an asset freeze is warranted with respect to the enjoined defendants. Plaintiffs offer nothing more than vague and sweeping conclusions about "fraud" and "schemes" and "sham liens." Talk is cheap; plaintiffs have failed to show us the evidence. Their request for a preliminary injunction must be rejected.

This case arises out of the debacle created in the housing market by the banking industry's "securitzation" of hundreds of thousands – if not millions – of home mortgage loans in the industry's relentless scheme to squeeze ever more money from the loans they made to American homeowners. In the end, the banking industry's reckless, and often illegal, practices made them billions of dollars but caused countless ordinary people to be ruined financially and brought the entire economy to the edge of disaster, avoiding that result only by the massive injection of taxpayer funds into the banks (which nevertheless went back to their former, ruinous practices).

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[1] The defendants who are subject to the court's temporary restraining order are JAMES C. CASTLE ("Castle"), CCTT GROUP, CJT FINANCIAL GROUP, OREPLEX INTERNATIONAL LLC. and JTF CONSULTING LLC ("JTF"). They are collectively referred to in this memorandum as the "enjoined defendants." Counsel does not represent JTF and the other four enjoined defendants have no knowledge of its alleged existence or conduct.

The enjoined defendants here are not the schemers portrayed by plaintiffs as seeking to defraud buyers of residential properties. Instead, the enjoined defendants (beginning with a home one of them owned) sought to help other homeowners quickly sell their homes in a falling market. To do so they followed a widely available (albeit not yet tested in California courts) "administrative default procedure" through which the "lender" acquiesced in reconveyance of the deeds of trust for loans that had been separately assigned and then "securitized" by the original beneficiary of the deed of trust (i.e., the lender). The procedure employed included the conduct of a securitization audit (including an extensive search of EDGAR records) through which it was determined that the lender named in the deed of trust did not own the loan originally secured by the deed of trust. The procedure also included Qualified Written Request letters ("QWRs") to the lender (to which the lenders were required under RESPA and other laws to respond) seeking to validate the information revealed by the securitization audit and also to provide the lender with multiple opportunities to respond to the audit findings.[2] The effect of this administrative procedure was to memorialize and record that the property no longer was security for the note and document that the "lender" was estopped from later claiming otherwise. Plaintiffs have offered no evidence whatsoever that this procedure, or the way it was implemented, is wrongful.[3]

This procedure was possible *only* because in each case the lender (or its successor) had *voluntarily* assigned the note but not the deed of trust in order to generate more money from the loan. In the process, the lender was fully paid for the note when it sold that note and ignored California law requiring that the note and deed of trust be assigned (if at all) together. Thus, although the borrower remained obligated on the note to its owner, the originating lender had no

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[2] The QWR letters requested other information as well.

[3] The essence of the damages claimed is that the original lenders were not paid off when the property was later sold. However, in each case the lender refused to provide information (as it was required to do by federal law) establishing that it was, in fact, the owner of the note. A party cannot simultaneously refuse to provide evidence that it is entitled to enforce an obligation and enforce that same obligation.

legal right to foreclose.

The homeowner plaintiffs[4] may (or may not) have a claim for damages but if they do it is against the lenders who wrongfully foreclosed on their property or otherwise clouded their title. Similarly, the title company and bank plaintiffs, if they have a claim at all against the enjoined defendants (which is doubtful) must rely on the contention that the enjoined defendants' conduct (reconveyance of the deed of trust and failure to pay the note with the proceeds of the sale of the homes) was wrongful in some manner. They have not done so here.

LEGAL ARGUMENT

I. PLAINTIFFS HAVE FAILED TO ESTABLISH THAT A PRELIMINARY INJUNCTION SHOULD BE ISSUED

A. Plaintiffs' Motion Is Based On An Incorrect Standard For Determining Whether A Preliminary Injunction Should Be Issued

Plaintiffs assert that the test for whether a preliminary injunction is appropriate is "either a combination of probable success of [sic] merits and irreparable injury or that serious questions are raised and the balance of hardships tips in his favor." *See Memorandum of Points and Authorities In Support of Exparte Motion For A Temporary Restraining Order, Order to Show Cause Why a Preliminary Injunction Should Not Issue And Other Relief* ("Plaintiffs' MPA") at 22:5-11. This is simply not correct.

A party seeking a preliminary injunction must establish four elements: (1) that he is *likely* to succeed on the merits; (2) that he is *likely* to suffer *irreparable harm* in the absence of preliminary relief; (3) that the balance of equities tips in his favor; and (4) that the injunction is in the public interest. *Winter v. NRDC* (2008) 555 U.S. 7, 20; *Thalheimer v. City of San Diego* (2011) 645 F.3d 1109, 1115. Plaintiffs have not even addressed the third and fourth required elements at all, and have provided no evidence to support their bare claim that the first two elements militate in their favor.

[4] The homeowner plaintiffs are those who bought the properties on which the deeds of trust had been reconveyed.

B. Plaintiffs Have Not Offered Any Evidence – Let Alone Admissible Evidence – That They Are Likely To Succeed On The Merits

1. Plaintiffs Offer No Evidence That They Will Prevail On Their Substantive Claims

The first element that Plaintiffs must establish is that they are likely to prevail on the merits of their substantive claims. Unless that showing is made, the court need not consider the remaining elements required for a preliminary injunction. *See Thalheimer v. City of San Diego, supra,* at1115; *Advertise.com, Inc. v. AOL Advertising, Inc.,* 616 F.3d 974, 982 (9th Cir. 2010); *see also Lazar v. Hertz Corp*., 143 Cal. App. 3d 128, 139 (1983) (constructive trust requires establishment of underlying claim).

Here, Plaintiffs have made no attempt to show that they will prevail on their substantive claims for fraud, conspiracy to defraud, Racketeer Influenced and Corrupt Organizations Act ("RICO") violation,[5] breach of contract, and breach of implied covenant to convey merchantable title against the enjoined defendants. Indeed, they barely mention these claims in their supporting papers. Instead they have submitted approximately 600 pages of purported "evidence" but have provided no reference to any element of their claims. It imposes an intolerable burden on the Court and opposing counsel to expect them to dig through plaintiffs' voluminous documentary "evidence" in quest of any admissible evidence that would likely prove plaintiffs' claims. Nevertheless, defendants' counsel has done so and found that there is none to be had.

For example, consider plaintiffs' First Cause Of Action for fraud. *See First Amended Complaint For: 1. Fraud, etc.* ("FAC") ¶¶ 222-228.[6] Under California law the elements of fraud that give rise to a tort action for deceit are (1) misrepresentation (false representation,

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[5] The law is settled in this Circuit that an injunction is not available to a private RICO plaintiff. See *Matek v. Murat*, 862 F.2d 720, 733 (9th Cir. 1988), citing *Religious Technology Center v. Wollersheim*, 796 F.2d 1076, 1084 (9th Cir. 1986), cert. denied, 479 U.S. 1103 (1987).

[6] Only three transactions directly implicate the enjoined defendants: Brown Street (see Plaintiffs' MPA at3:12-4:12), Loch Dane (see Plaintiffs' MPA at 6:5-7:5), and Northcrest (see Plaintiffs' MPA at 10:14-11:27).

concealment or nondisclosure; (2) knowledge of falsity ("scienter"); (3) intent to defraud, i.e., to induce reliance; (4) justifiable reliance; and (5) resulting damage. *Engalla v. Permanente Medical Group, Ins.,* 15 Cal.4th 952, 974 (1997). While Plaintiffs' MPA is replete with conclusory references to "fraud" and "fraudulently" and "sham" acts and "schemes," they proffer *no* evidence that identifies a false representation, concealment or nondisclosure by the enjoined defendants to the plaintiffs.[7] In fact, the FAC falls woefully short of the Rule 9(b) standards for pleading fraud with particularity; the FAC also relies heavily on generic allegations that each defendant is the "agent" and "alter ego" of each other defendant, but fails to specifically identify the particular conduct attributable to each of the defendants. While these are matters that will be raised in the Rule 12 motions, these legal deficiencies in pleading also infect the motion for preliminary injunction. Thus, for example, while Plaintiffs allege that defendant Castle represented that he owned the Brown Street property free and clear of liens and showed the Brown Street reconveyance to prove that fact (*see* Plaintiffs' MPA at 3:25-28), *they offer no* ***evidence*** *that this statement is false, nor have they alleged or established the elements of actual and justifiable reliance.* Plaintiffs also argue that none of their purchase money was used to pay off the note (*see* Plaintiffs' MPA at 4:1-5), but again *there is no evidence that the defendants had a duty to pay the note or had promised to do so*.

Plaintiffs contend that the Loch Dane and Northcrest properties involved "sham" sales because defendants did not actually make the loans to the buyers of the properties although they recorded a deed of trust stating there was such a loan. *See* Plaintiffs' MPA at 6:10-14 and 10:22-25 and Exhibits 11 and 32. But *absolutely no evidence is produced that such loans were not made*. The motion is based on suspicion and surmise. In fact, the exact same allegations are made in the FAC on information and belief (*see* FAC ¶¶ 115 and 148), and plaintiffs offer no

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[7] There are neither charging allegations nor admissible evidence connecting the enjoined defendants with the other transactions. See Fed. R. Civ. P. 9(b) and *Moore v. Payport Package Exp., Inc.*, 885 F.2d 531, 540 (9th Cir. 1989) [pleadings must specify "the time, place and nature of the alleged fraudulent activities"].

better evidence here.[8]

There is a similar lack of evidence to establish that the defendants knew of the alleged falsity, intended to defraud the plaintiffs, that the plaintiffs justifiably relied on the alleged misrepresentations or that there any resulting damages. Instead of providing admissible evidence, plaintiffs attempt to focus solely on whether they have established a right to a constructive trust and asset freeze pending trial. Constructive trust, however, is an equitable *remedy* that compels the transfer of wrongfully held property to its rightful owner. *Mattel, Inc. v. MGA Entertainment, Inc.*, 616 904, 908-909 (9th Cir. 2010); Plaintiffs have put the cart before the (in this case nonexistent) horse. First they must establish that they have legally viable claims upon which they are likely to prevail at trial. Only then can they proceed to establish that they would be entitled to a constructive trust based on those claims. As it turns out they can do neither.[9]

2. Plaintiffs Have Not Established That They Are Likely To Prevail On Their Claim For A Constructive Trust

Even assuming plaintiffs had provided evidence to establish that they are likely to prevail on their substantive claims, they have not provided evidence that they would then be entitled to a constructive trust.

Plaintiffs correctly argue that they must show three elements to justify the imposition of a constructive trust: (1) the existence of a *res*; (2) the plaintiff's right to that *res*, and (3) the defendant's gain of that *res* by a wrongful act. *Lazar v. Hertz Corp*., *supra*, at 139. But they fail to provide evidence of those elements.

Plaintiffs identify the *res* as the money that (some of the) homeowner plaintiffs paid the

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[8] Plaintiffs also contend that the reconveyances to the home buyers were signed by Carl Wallace as an authorized agent for the original lender. See Plaintiffs' MPA at 6:15-19, 11: 1-8. Mr. Wallace is not an enjoined defendant but defendants note that there is no evidence proffered that he is not an authorized agent.

[9] Note that an injunction is a matter of equitable discretion; it does not follow from success on the merits as a matter of course. *Winter v. NRDC, Inc., supra,* at 32.

enjoined defendants when they purchased their homes. *See* Plaintiffs' MPA 22:23-24. However, they proffer no evidence of any kind whatsoever that the res they claim resides in the frozen assets. A constructive trust in a specific *res* is not the same as a general attachment of funds to secure a damages claim.[10] Plaintiffs claim they have a right to the *res* "because the liens that those monies should have been used to pay either remain on their properties or have been foreclosed on. *See* Plaintiffs' MPA 22:23-25. But plaintiffs have not even alleged, much less provided (admissible) evidence, that the enjoined defendants ever had an obligation to pay off the note, which was no longer secured by the real property. The alleged wrongful act is asserted to be diverting the "[p]laintiffs' purchase monies for [the enjoined defendants'] own use by fraudulently reconveying the legitimate deed of trust on the property thereby allowing [the enjoined defendants] to abscond with [p]laintiffs' purchase money. *See* Plaintiffs' MPA 22:25-27. There is no evidence supporting this argumentative assertion. No evidence was presented that the deed of trust was "fraudulently" reconveyed. In any case the alleged "wrongful act" is unconnected to the alleged right of the plaintiffs to the *res*: If their right to the money is based on the enjoined defendants' failure to pay the note that was originally secured by the real property, the enjoined defendants' reconveyance is irrelevant.

Plaintiffs have failed to show that it is likely that they will obtain a constructive trust on the enjoined defendants' assets after a trial on the merits; they thus cannot obtain a preliminary injunction on that theory now.

C. Plaintiffs Have Not Shown That They Are Likely To Suffer Irreparable Harm In The Absence of A Preliminary Injunction

Plaintiffs seeking preliminary relief must also demonstrate that irreparable injury is likely in the absence of an injunction. *Winter v. NRDC, Inc*., *supra*, at 22. All of plaintiffs' claims of irreparable injury constitute monetary harm. *See* Plaintiffs' MPA 23:1-18. Monetary injury is not normally considered irreparable. *Los Angeles Memorial Coliseum Commission v. NFL,* 634

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[10] Plaintiffs neither seek, nor are they entitled to, a Right To Attach Order.

F.2d 1197, 1202 (9th Cir. 1980).

Plaintiffs claim here, however, that the preliminary relief of an "asset freeze" is necessary because the defendants "will dispose of, conceal or send abroad all of the Assets." *See* Plaintiffs' MPA 23:15-16. Their evidence for this claim: None!

A party seeking an asset freeze must show a *likelihood* of dissipation of the claimed assets, or other inability to recover monetary damages, if relief is not granted. *Johnson v. Couturier*, 572 F.3d 1067, 1085 (9th Cir. 2009). Not a single piece of the voluminous so-called "evidence" submitted in support of this motion justifies even an inference that the enjoined defendants will abscond with money claimed by plaintiffs, and plaintiffs do not argue that there is such evidence. Instead they contend that "it is clear from Defendants' blatant disregard of the law and their utter disregard for the welfare of their victims that absent the Asset Freeze, Defendants will dispose of, conceal or send abroad all of the Assets." *See* Plaintiffs' MPA 23:14-16. The court in *TAGC Management, LLC v. Lehman, Lee & Xu Ltd.*, 2010 U.S. Dist. LEXIS 92138 (C.D. Cal. 2010) decisively rejected a similar claim:

> Plaintiffs conclusorily argue that, because the alleged facts in this case paint Defendant [the defendant] as a fraudster "there is a substantial likelihood that [he] will flee the Court's jurisdiction [if temporary relief is not granted.]" Pl.'s Mem. at 20. The fact that Defendants may have been engaged in some sort of fraud does not automatically justify the issuance of an asset freeze. Plaintiffs allegations of injury are financial in nature and, therefore, compensable. In addition, although Plaintiffs speculate that a given defendant's willingness to commit a fraud evinces the same
>
> defendant's willingness to wrongfully dissipate assets or to flee the Court's jurisdiction, "[s]peculative injury does not constitute irreparable injury." [Citation omitted.] The only support that Plaintiffs offer for the specific claim that Defendants are likely to dissipate assets or flee the Court's jurisdiction is the conjectural assertion that "[defendant] will go to any length to achieve his goal [of defrauding Plaintiffs]." Pl.'s Mem. at 20. Plaintiffs have failed to meet their burden of showing that they are entitled to the "drastic remedy" of emergency injunctive relief. [Citation omitted.]

Vaccaro v. Sparks, 2011 U.S. Dist. LEXIS 66141, 4-6 (C.D. 2011). *Ad hominem* attacks cannot substitute for evidence establishing that irreparable harm to the plaintiffs is likely in the absence of injunctive relief.

In this case, no evidence of any kind has been produced that even purports to establish that "[d]efendants will dispose of, conceal or send abroad all of the Assets." In such circumstances a preliminary injunction is improper. *See Sampson v. Murray*, 415 U.S. 61, 88, 91-92 (1974) (when no witnesses were heard on the issue of irreparable injury, respondent's complaint was not verified, and affidavit she submitted to the District Court did not touch in any way upon considerations relevant to irreparable injury order for preliminary injunction was improper). And even if there were evidence of fraud, such evidence, alone, would be insufficient to justify an asset freeze. *Compare FTC v. John Beck Amazing Profits, LLC*, 2009 U.S. Dist. LEXIS 130923, 45-46 (C.D. Cal. 2009) (fraud alone will not justify an asset freeze) *with FTC v. Willms*, 2011 U.S. Dist. LEXIS 103160, 34-35 (W.D. Wash. 2011) (evidence that defendants had likely engaged in misleading marketing practices, had foreign bank accounts through which they transferred funds and email activity suggested the movement of funds outside of the United States might have been for an improper purpose justified asset freeze). The enjoined defendants have no such foreign bank accounts and have not transferred any monies they have received to such accounts. *See* Castle Decl. ¶ 11.

An asset freeze is not justified in such circumstances. *See FTC v. Willms, supra,* at 35 (asset freeze could not be ordered against defendants who did not engage in offshore transfer of assets).

Plaintiffs have not produced any evidence, much less sufficient evidence, to justify freezing the assets of the enjoined defendants.

D. Plaintiffs Have Not Shown That The Balance of Equities Tips In Their Favor

In order to obtain preliminary relief the plaintiffs mush show that the balance of equities tips in their favor. In each case, courts must balance the competing claims of injury and must consider the effect on each party of the granting or withholding of the requested relief. *Winter v. NRDC*, Inc., *supra*, at 24; *Independent Living Center of Southern California, Inc. v. Maxwell-Jolly*, 572 F.3d 644, 651 (9th Cir. 2009).

Plaintiffs have made no effort to address the balance of equities in their request for a preliminary injunction. The only "equity" in favor plaintiffs is apparently the speculation that

the enjoined defendants might possibly abscond with the funds before trial. As set forth in Part C, above, that is insufficient to support a preliminary injunction.

On the other hand, the equities in favor of *not* issuing the preliminary injunction are substantial. Defendant Castle requires approximately $10,500 per month to meet the basic expenses of himself and his family. *See* Castle Decl. ¶ 8 He also needs funds to defend this litigation.

The funds in the bank accounts to which he has access are the major source of paying those expenses. *Id*. ¶ 10 To preclude him from accessing those accounts during what no doubt will be protracted litigation would cause serious financial hardship and could eventually lead to bankruptcy. *Id*. Such a result would be unconscionable in any circumstance but particularly so here where the defendants have done nothing more than sling insults without any supporting evidence.

E. Plaintiffs Have Not Shown That There Is No Public Interest Involved

The public interest analysis for the issuance of a preliminary injunction requires the court to consider whether there exists some critical public interest that would be injured by the grant of preliminary relief. *Independent Living Center of Southern California, Inc., supra* 659. Plaintiffs have failed to produce any evidence or argument on this one way or another.

II. IF THE COURT CONSIDERS ISSUANCE OF THE INJUNCTION IT MUST BE NARROWLY TAILORED AND AN ADEQUATE BOND REQUIRED

Injunctive relief must be tailored to remedy the specific harm alleged. *Lamb-Weston, Inc. v. McCain Foods, Ltd.*, 941 F.2d 970, 974 (9th Cir.1991). An overbroad injunction is an abuse of discretion. *Ibid*. This is particularly true when a preliminary injunction is involved. *Zepeda v. United States Immigration & Naturalization Service*, 753 F.2d 719, 728, fn. 1 (9th Cir. 1983).

In this case if the court considers issuing an injunction at all (and the enjoined defendants vehemently dispute that an injunction would be improper) it must *exclude* from the order freezing assets such funds as are necessary to permit Castle expend the reasonably necessary funds for his living expenses and funds necessary for the enjoined defendants to defend themselves in this lawsuit (costs which are likely to be extremely substantial).

In addition, the court should require the plaintiffs to post a bond adequate to cover the losses to the enjoined defendants in the event they do not prevail. That would include loss of home, automobile, interest, damage to credit, and the collateral damage from loss of access to funds necessary to defend this action. The current bond of $10,000 is woefully inadequate. *See Declaration of Ann McFarland Draper In Opposition to Plaintiffs' Motion for Preliminary Injunction*.

III. OBJECTIONS TO EVIDENCE

Defendants object to the declarations, documents and request for judicial notice proferred by Plaintiffs as "evidence" in support of their *Ex Parte Motion For A Temporary Restraining Order, Order to Show Cause Why A Preliminary Injunction Should Not Issue*, specifically the declarations of David Hanna, Wesley Halihan, Li-Ling Sung, Richard Heinz, Brian Phuong, Tamar Schiller and Stephen Seto, as well as the Request for Judicial Notice. Defendants further request that all inadmissible evidence be stricken and be not considered by the Court in determining the issues raised in the motion.

The proffered "evidence" is replete with inadmissible hearsay, and includes material that is irrelevant, argumentative, and for which the declarant lacks personal knowledge or competence. The attached exhibits are also inadmissible hearsay, are unauthenticated, and in most cases lack foundation. These deficiencies are particularly egregious in the case of the Tamar Schiller, who is merely a claims counsel for Plaintiff Fidelity National Title, yet attempts (improperly) to authenticate voluminous documents for which she lacks personal knowledge, is not the custodian, and cannot lay a foundation for admissibility. No explanation is given as to why evidence was not proffered through competent witnesses – such as a title officer in charge of the title plant, or a bank officer as to loan documents, or an escrow officer as to escrow documents . . . particularly in light of the fact that movants spent months preparing their motion papers.

In addition, although Tamar Schiller's declaration allegedly attaches 79 exhibits, counsel is unable to locate Exhibits 71 through 75 anywhere in the ECF system, and therefore concludes that they were never filed. Defendant objects to any consideration of these unfiled exhibits.

A party's declaration testimony is properly disregarded where the declaration cannot be based upon otherwise inadmissible evidence, including but not limited to: statements of "fact" that are irrelevant, immaterial and/ or prejudicial (Fed. R. Evid 401, 402 and/or 403); statements that are hearsay (Fed. R. Evid 801(c) and/or 802; statements that lack foundation (Fed. R. Evid. 602); and statements of opinion (Fed. R. Evid. 701). Statements that lack documentary support and/or are contrary on their face are likewise inadmissible (Fed. R. Evid. 602 and 901). Declarations containing such inadmissible evidence are to be disregarded by a court.

The motion papers comprise approximately 600 pages of documents. The declarations submitted consist uniformly of inadmissible material, and there are numerous exhibits. Defendants have set forth the general nature of their evidentiary objections above, in the body of the brief, but under the circumstances, given the overwhelming volume of evidence and the extent of inadmissibility involved, Defendants will also submit a separate Supplement Detailing Defendants' Evidentiary Objections and an administration motion seeking leave to do so.

CONCLUSION

> It goes without saying that an injunction is an equitable remedy. It "is not a remedy which issues as of course," [citation omitted] or "to restrain an act the injurious consequences of which are merely trifling." [Citation omitted.] An injunction should issue only where the intervention of a court of equity "is essential in order effectually to protect property rights against injuries otherwise irremediable."

Weinberger v. Romero-Barcelo, 456 U.S. 305, 311-312 (1982). Plaintiffs have not even attempted to meet this high standard. Therefore, based on the arguments and authorities stated herein, the enjoined defendants request this court to (1) dissolve the temporary restraining order issued against the enjoined defendants and (2) deny the plaintiffs' motion for a preliminary injunction and expedited discovery. In the event the court does issue an injunction, it must exclude a restraint on monies necessary for the enjoined defendants to meet their living expenses

and costs in this litigation and require a substantial bond to be posted by the plaintiffs to protect the enjoined defendants.

DATED: October 10, 2011

RESPECTFULLY SUBMITTED,

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